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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Estate of TRISHAY D. GLASPER, a
Minor.

LEO F. BAUTISTA,
Petitioner and Appellant,

v.

TRISHAY D. GLASPER,
Objector and Respondent.

A146736

(Alameda County
Super. Ct. No. RP10517992)

Appellant Leo F. Bautista, formerly the guardian of the estate of respondent Trishay D. Glasper, appeals from an order directing him to distribute all the remaining estate assets to Glasper, who reached the age of majority in March 2015. He contends the court erred in not providing any reserve for final expenses of administering the guardianship pending his discharge. We shall reverse the order to the extent it fails to allow Bautista to recoup expenses incurred in administering the guardianship, including reasonable compensation to be paid to Bautista and his attorney.

FACTUAL AND PROCEDURAL BACKGROUND

Glasper was 13 years old when her mother died in 2008. Following her mother's death, Glasper lived with her father, who was granted sole legal custody over her. Glasper was the beneficiary of two life insurance policies and a living trust that terminated upon her mother's death.

Bautista, a licensed professional fiduciary, was appointed the successor trustee of the mother's trust in 2009. In 2010, Bautista filed a petition for his appointment as guardian of Glasper's estate until she reached the age of majority. Glasper's father objected to appointing Bautista as guardian of the estate and filed a competing petition to be appointed as the guardian of the minor's estate. A court investigator concluded that Glasper's father did not have the knowledge or experience to manage a large estate but that Bautista appeared to have sufficient experience to serve as guardian. In January 2011, the court appointed Bautista as guardian of the estate of Glasper. The guardianship estate was valued at \$574,106.35 at the commencement of the case.

Bautista filed a first account and report in February 2012 covering the period from January 14, 2011, through January 13, 2012. In February 2014, he filed a second account and report (second account) covering the period from January 14, 2012, through January 13, 2014. In the second account, Bautista noted that Glasper would turn 18 in the following year and that the guardianship would terminate by operation of law. (See Prob. Code, § 1600, subd. (a).) Bautista expressed concern that Glasper lacked the experience and ability to manage her finances or protect her inheritance from dissipation once she reached the age of majority. He proposed various alternatives for protecting the estate once Glasper reached the age of majority, including setting up a conservatorship of the estate if Glasper objected to a trust arrangement. The court issued an order settling the second account and approving compensation for Bautista and his attorney but declined to issue any instructions addressing arrangements to protect the estate upon the termination of the guardianship.

Glasper turned 18 on March 22, 2015. In April 2015, Bautista filed his third account and report (third account) covering the period from January 13, 2014, through January 31, 2015. Bautista sought compensation for his services through January 30, 2015, in the amount of \$9,787.50, and for his attorney's services through April 8, 2015, in the amount of \$4,075.00.

In the third account, Bautista stated his willingness to seek the appointment of a conservator for Glasper's estate for the explicit purpose of protecting the estate from

dissipation upon distribution to Glasper. Bautista expressed concern that Glasper had no experience or knowledge concerning personal financial management and that her father, who had limited financial resources, might exercise undue influence over her to gain access to the proceeds of the guardianship estate. Bautista stated that he intended to distribute \$50,000 to Glasper before the court ruled on his petition. He also indicated that, if the court declined to give instructions concerning instituting a conservatorship, he would distribute the remaining funds in the guardianship estate to Glasper but would reserve \$20,000 to be used for a final accounting and related expenses of administration before his discharge, which by law could not be granted before March 22, 2016, or one year after Glasper reached the age of majority. (See Prob. Code, § 2627, subd. (b).)

In response to Bautista's third account, a probate examiner issued a checklist noting various technical and procedural issues that had to be resolved or reviewed by a judge. The examiner's checklist was apparently not made a part of the lower court's record and has not been provided to this court. Nevertheless, the record does include a declaration by Bautista responding to the examiner's notes. According to Bautista, the examiner noted that the end date for the accounting period should be the date the minor reached age 18 or thereafter.

In an August 2015 declaration responding to the examiner's checklist, Bautista provided a supplemental accounting through the date of Glasper's 18th birthday. Bautista stated that he would need to file a further accounting because he would need to know how the estate would be distributed before rendering a final account. Bautista did not seek any further compensation for himself or his attorney at the time he filed his August 2015 declaration.

On September 4, 2015, the court entered a final accounting order based upon Bautista's third account (final accounting order). The court used the proposed order submitted by Bautista but handwrote "and final" on the order so that it read, "order settling third *and final* account and report by guardian of the estate." (Italics added to emphasize handwritten notation.) Likewise, the court included a handwritten notation in the text of the final accounting order reflecting that the third account and report was

“final.” The court approved compensation for Bautista and his attorney as requested in the third account submitted in April 2015. In other words, the court approved compensation for Bautista only through January 31, 2015, and for his attorney only through April 8, 2015. In handwritten text, the court authorized Bautista to “distribute all assets of the estate less the above payments to Trishay Djanae Glasper due to attainment of age of majority (18 years old), namely Bank of America acct xx1-28400, Merrill Lynch Portfolio acct #xx-14043, remaining funds in attorney trust account and miscellaneous personal property.” The court’s final accounting order does not mention anything about withholding \$20,000 as a reserve for the remaining expenses of administering the guardianship.

Bautista proceeded to distribute to Glasper all but \$20,000 of the assets of the guardianship estate. In an ex parte application filed on October 14, 2015, Bautista sought to clarify or correct the court’s final accounting order and to approve further compensation for him and his attorney. He sought a clarification that would explicitly authorize him “to retain a reserve of \$20,000 cash for fees, costs and closing expenses pending his final discharge or other further order.” He also sought authorization to pay compensation to him and his attorney from the reserved funds. Bautista asked for \$6,652.50 for services rendered through October 2, 2015, and he requested \$4,752.00 for services rendered by his attorney through October 9, 2015.

In an order dated October 16, 2015, the court denied Bautista’s ex parte application. The court’s order states: “A noticed hearing is required by the Court.”

Bautista did not file a noticed motion or otherwise seek reconsideration of the court’s September 4 order. Instead, Bautista filed a notice of appeal from the court’s order.¹

DISCUSSION

On appeal, Bautista challenges the court’s final accounting order to the extent that it distributes the entirety of the guardianship estate to Glasper without reserving some

¹Glasper, who is representing herself in propria persona, did not make an appearance in this appeal or file any responsive appellate brief.

portion of the estate to pay for expenses of administering the guardianship, including compensation owed to Bautista and his attorney. Among other things, he claims that the failure to allow for recovery of further expenses amounts to an abuse of discretion. We agree.

A court-appointed guardian must petition the court for an order approving his fees and the fees of any attorney representing the guardian. (Prob. Code, §§ 2430, subd. (a)(4), 2640, subd. (a).) Following a noticed hearing, the court is required to award just and reasonable compensation, which is charged to the estate. (Prob. Code, § 2640, subd. (c).) The court's compensation award will not be disturbed on appeal absent a showing that the court abused its discretion. (See *In re O'Connor's Estate* (1938) 28 Cal.App.2d 527, 531.)

Here, Bautista made clear in his third account that he could not submit a final accounting and compensation request until the court ruled on his petition seeking to commence conservatorship proceedings. He expressly stated that he would seek to withhold \$20,000 from any distribution to Glasper as a reserve for further expenses, including compensation owed to him and his attorney.

While the probate court is granted broad discretion in determining just and reasonable compensation, it abuses that discretion when it deprives a guardian and his or her attorney of the right to seek *any* compensation or reimbursement for expenses incurred after a particular date but before the guardian is discharged. Here, by failing to allow for a reasonable reserve to pay for the administration of the guardianship, the court abused its discretion because it deprived Bautista and his counsel of the right to seek reimbursement for expenses and to be compensated for the professional services they rendered to the guardianship. Because we conclude that it was an abuse of discretion to fail to allow for a reasonable reserve for expenses before distributing the entirety of the guardianship estate, we need not address Bautista's other contentions, including that it was a violation of his due process rights for the probate court to enter a final accounting order without fair notice of the court's intent.

Bautista claims to have withheld \$20,000 in the estate as a reserve to pay final expenses. Upon remand, the probate court shall entertain a fee petition by Bautista and award reasonable fees and expenses to him and his attorney from this reserve, with any remaining amount to be distributed to Glasper.

DISPOSITION

The order of September 4, 2015, is modified to provide that Bautista shall be permitted to withhold a reserve of \$20,000 in the guardianship estate for final expenses of administering the guardianship, including reasonable compensation owed to Bautista and his attorney. The probate court shall conduct further proceedings in accordance with this opinion to fix the amount of compensation and reimbursable costs to be paid from the reserved amount. Bautista shall recover his costs on appeal.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.